

Can I Sell My Home While I'm in Bankruptcy?

You've recently filed a bankruptcy case and now you've discovered that someone would like to buy your home. Can you sell the home? The answer depends upon what type of bankruptcy case you are in.

Chapter 7:

In a Chapter 7 case, from the date that the case is filed until the date that your case is finally "closed," technically your home is still under the control of the Bankruptcy Trustee. Remember that a Chapter 7 bankruptcy case is not closed until the Bankruptcy Court gets a notice from the Trustee that it is OK to close the case. This is true even if you have already received your "Discharge" from the Court. A case is not closed until the Trustee has decided whether or not there are "non-exempt" assets that can be collected, sold and used to pay creditors. If there are assets to be taken and sold, the case will not be "closed" until all of the assets are sold and the funds have been disbursed by the Trustee to the creditors. If there are no "non-exempt" assets in your case, normally the case will be closed shortly after you get your "Discharge" papers. If there are assets to sell and funds to distribute, your case can technically remain open for a year or more after you get your discharge.

Why does this matter? As long as the case is not officially closed, you will not be able to sell your house unless you get an Order from the Bankruptcy Court allowing you to do so. This order is obtained by filing a document known as a Motion to Abandon Property. Remember that if you have more than \$60,000 in equity in the house (your "homestead exemption") at the time the case was filed (or more than \$90,000 if you are over the age of 60 or are officially "disabled"), the Trustee is able to collect the additional equity and used those funds to pay creditors. However, if your equity from the sale will be less than your allowed "homestead exemption," the Court will usually grant this order and allow you to sell your residence. Remember that there is NO "homestead exemption" in any property that is not your current residence.

Filing a Motion to Abandon and obtaining an Order permitting the sale normally takes about 30 to 40 days to complete and requires additional attorney fees. So if you find yourself marketing your house or getting a Contract from a potential purchaser, BE SURE to let your bankruptcy attorney know immediately! Remember to set your anticipated closing date far enough in the future to give you time to get the required order.

Chapter 13:

In a Chapter 13 case, it is difficult to sell a home prior to the Court's approval of your Chapter 13 Plan. However, once your plan is approved (confirmed), in the State of Colorado

your property belongs to you once again. This means that no further court order is required before you can sell your home. However, occasionally we come across a Title Company that is conducting the closing that isn't aware of this and may still insist on getting an Order from the Bankruptcy Court approving the sale. If this is the case, a Motion to Abandon (as mentioned under Chapter 7, above) may be required. Sometimes we are able to talk them out of requiring this order since it technically is not needed.

If you do sell your home in a Chapter 13 case, be sure to inform your attorney. If your Chapter 13 Plan is paying money to your mortgage company to catch up on back mortgage arrears, it will be important to modify your plan to stop having this money sent to the mortgage company after the home is sold. If money to the mortgage company is to be stopped, this modified plan may also allow us to lower your plan payments from that time on.

© 2013 - Mark E. Henze